Remarks

Claims 26-43 are pending in the subject application. Applicants acknowledge that claims 28-31 and 40-43 have been withdrawn from further consideration as being drawn to a non-elected invention. By this Amendment, Applicants have canceled claims 32 and 40-43, amended claims 26, 33, 34, 37 and 39 and added new claims 44-61. Support for the amendments and new claims can be found throughout the subject specification and in the claims as originally filed. Entry and consideration of the amendments and new claims presented herein is respectfully requested. Accordingly, claims 26-31, 33-39 and 44-61 are currently before the Examiner (with claims 26, 27, 33-39 and 44-61 reading on the elected invention). Favorable consideration of the pending claims is respectfully requested.

As an initial matter, Applicants note that the Office Action mailed January 31, 2008 does not indicate that the Examiner considered Applicants' Information Disclosure Statement that was filed in this application. Accordingly, Applicants respectfully request that the Examiner make of record the Information Disclosure Statement submitted to the Patent Office on September 18, 2007 in the subject application.

Claim 34 is objected to because it depends from itself. Claim 34 has been amended to correct the dependency. Accordingly, reconsideration and withdrawal of the objection is respectfully requested.

The subject specification has been objected to on the grounds that it does not comply with 37 CFR §1.821 through 1.825. Specifically, no sequence identification has been provided for the amino acid sequence in Figure 1 of the subject specification. By this Amendment, Applicants have amended the brief description of Figure 1 to include the sequence identifier number. In addition, a Submission of Sequence Listing Under §1.821, including a replacement sequence listing on paper and a computer readable format, is attached. The amino acid sequence shown at page 24 of the subject specification has also been designated with a sequence identifier number. Accordingly, reconsideration and withdrawal of the objection is respectfully requested.

The Office Action objects to the specification because it contains embedded hyperlinks or other forms of browser executable code. Applicants respectfully submit that this issue is moot in

view of the amendments made to the specification. Accordingly, reconsideration and withdrawal of the objection is respectfully requested.

Claims 26, 27 and 32-39 are rejected under 35 U.S.C. § 112, second paragraph, as indefinite. Applicants respectfully assert that the claims as filed are definite and have addressed each rejection separately.

Claim 26 is rejected to as vague in that he term "clusterin" appears to be novel, and without a reference to a precise amino acid sequence identified by a proper SEQ ID NO:. Applicants have amended claim 26 to indicate the administration of "an effective amount" of a composition comprising clusterin, clusterin fusion proteins and PEGylated clusterin polypeptides. Support for these amendments can be found, for example, at pages 17 and 24 of the as-filed specification. Accordingly, reconsideration and withdrawal of this aspect of the rejection is respectfully requested.

Claims 26 and 27 are rejected in their recitation of prevention of the instantly-elected traumatic nerve injury of the peripheral nervous system. The terms "isoforms", "preventing" and "an agonist of clusterin activity" have been deleted from claim 26; thus, these issues are now considered moot.

Claim 34 is rejected for insufficient antecedent basis for the limitation "the fused protein." Applicants have revised claim 34 and respectfully submit that this issue is now moot. Accordingly, reconsideration of this aspect of the rejection and its withdrawal is respectfully requested.

Claims 37 and 39 are rejected in their recitation of "use" or "used". Applicants gratefully acknowledge the Examiner's helpful suggestion of suitable claim language. By this Amendment, Applicants have amended claim 37 to recite "administration" and amended claim 39 to recite "administered." Accordingly, reconsideration and withdrawal of the rejection under 35 U.S.C. § 112, second paragraph, is respectfully requested.

Claims 26, 27 and 32-39 are rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. The Office Action states that the claims are drawn to a genus of molecules defined only as being related to clusterin or having agonist clusterin activity but that the specification does not provide sufficient distinguishing, identifying characteristics of the claimed genus.

Applicants respectfully assert that there is adequate written description in the subject specification to convey to the ordinarily skilled artisan that they had possession of the claimed invention. However, in an effort to advance prosecution in this matter, claim 26 has been amended and claim 32 has been canceled to attend to the issues noted in the Office Action; thus, it is respectfully submitted that this issue is now moot. Accordingly, reconsideration and withdrawal of the rejection under 35 U.S.C. § 112, first paragraph, is respectfully requested.

Claims 26, 27, 32 and 39 are rejected under 35 U.S.C. § 102(b) as anticipated by Fiscella *et al.* (U.S. Patent No. 6,936,691). Additionally, claims 26 and 32 are rejected under 35 U.S.C. § 102(e) as anticipated by Rosen *et al.* (WO 03/059934, 2003).

The Office Action indicates that the Fiscella *et al.* patent teaches administration of a polypeptide that is 57.6% identical to SEQ ID NO: 1 for the treatment of traumatic injury of both the central and peripheral nervous systems. In addition, the patent is cited as teaching that polypeptides are administered in the range of 1 μg/kg body weight to 10mg/kg body weight. The Office Action also indicates that Rosen *et al.* teach albumin fusion proteins comprising amino acid residues 1-22 of SEQ ID NO: 1 for the treatment and prevention of diabetic neuropathy. Applicants respectfully assert that both the Fiscella *et al.* and Rosen *et al.* references do not anticipate the claimed invention.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). In this case, it is respectfully submitted that the claimed invention is not anticipated by either Fiscella *et al.* or Rosen *et al.* as the references fail to teach a clusterin polypeptide as recited within the claims. Additionally, SEQ ID NO:382 cited in the office action corresponds to the clusterin signal sequence and is only mentioned in the reference as a potential leader sequence used to express the claimed albumin fusion protein. As noted in the relevant sections from W003/059934:

> Expression vectors are known in the art, and are available commercially or described herein. For example, as described in the Examples, an "expression cassette" containing one or more of: (1) a polynucleotide encoding a given albumin fusion protein, (2) a leader sequence, (3) a promoter region, and (4) a transcriptional terminator, may be assembled in a convenient cloning vector and subsequently be moved into the appropriate vector. (see page 144, paragraph [0291])

> The desired albumin fusion protein may be initially expressed with a secretion leader sequence, which may be any leader effective in the yeast chosen. Leaders useful in yeast include any of the following: .....m) the clusterin precursor signal sequence (e.g., MMKTLLLFVGLLLTWESGQVLG SEQ ID NO:382). (see page 144, paragraph [0307])

Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. §§ 102(b) and 102(e) is respectfully requested as the cited references fail to anticipate the claimed invention.

Claims 35 and 36 are rejected under 35 U.S.C. § 103(a) as obvious over Fiscella *et al.* (U.S. Patent No. 6,936,691), in view of Koch *et al.* (1997). The Office Action explains that the Fiscella *et al.* reference teaches administration of a clusterin polypeptide, which is at least 40% homologous to the claimed clusterin polypeptide of SEQ ID NO: 1, for the treatment of traumatic injury of both the central and peripheral nervous systems. The Koch *et al.* reference is cited as teaching that heparin is a useful treatment following radical prostatectomy. Applicants respectfully assert that the claimed invention is not obvious over the cited references.

As the Patent Office is aware, all the claim limitations must be taught or suggested by the prior art in order to establish the *prima facie* obviousness of a claimed invention (*CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) citing *In re Royka*, 490 F.2d 981, 985 (C.C.P.A. 1974)). In the case of the instant rejection, it is respectfully submitted that the cited combination fails to teach each and every limitation of the claimed invention. For example, Fiscella *et al.* fails to teach a clusterin polypeptide meeting the limitations of the currently claimed invention and Koch *et al.* fails to remedy this defect in the teachings of Fiscella *et al.* Accordingly, it is respectfully submitted that the cited combination of references fails to establish the *prima facie* obviousness of a claimed invention and reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a) is respectfully requested.

Claim 37 is rejected under 35 U.S.C. § 103(a) as obvious over Fiscella *et al.* (U.S. Patent No. 6,936,691), in view of DiPaola *et al.* (1997). The Office Action states that DiPaola *et al.* teach that compositions comprising interferon are useful for treatment following radical prostatectomy and that it would have been obvious to combine the composition of Fiscella *et al.* with that of DiPaola *et al.* for the expected benefit of treating peripheral neurological disease. As noted above, all the claim limitations must be taught or suggested by the prior art in order to establish the *prima facie*

obviousness of a claimed invention. As also noted above, Fiscella *et al.* fails to teach a clusterin polypeptide meeting the limitations of the currently claimed invention. DiPaola *et al.* fails to remedy this defect in the teachings of Fiscella *et al.*; thus, a *prima facie* case of obviousness has not been established for the claimed invention and reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a) is respectfully requested.

It should be understood that the amendments presented herein have been made solely to expedite prosecution of the subject application to completion and should not be construed as an indication of Applicants' agreement with or acquiescence in the Examiner's position. Applicants expressly reserve the right to pursue the invention(s) disclosed in the subject application, including any subject matter canceled or not pursued during prosecution of the subject application, in a related application.

In view of the foregoing remarks and amendments to the claims, Applicants believe that the currently pending claims are in condition for allowance, and such action is respectfully requested.

The Commissioner is hereby authorized to charge any fees under 37 CFR §§1.16 or 1.17 as required by this paper to Deposit Account No. 19-0065.

Applicants invite the Examiner to call the undersigned if clarification is needed on any of this response, or if the Examiner believes a telephonic interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

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FCE/sl
Attachment: Submission of Sequence Listing Under §1.821
New pages 1-3 (Sequence Listing)